THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO.22042 OF 1998

DATED: 29-03-2007

Between:-

Rongali Appalasuryanarayanamma
and others.

.. Petitioners

and

The Joint Collector, Vizianagaram,
Vizianagaram District and others.

.. Respondents

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ORDER:

This writ petition is filed seeking a mandamus declaring the notice dated 27.07.1998 issued by the 1st respondent as illegal and arbitrary, and consequently to set aside the same.

The brief facts of the case are that one R. Vishnu Murthy, husband of the 1st petitioner and father of the petitioners 2 to 6, was granted D-Form patta in respect of the land admeasuring Acs.4-63 cents in Sy.No.248/4 of Kottam Village, by the then Tahasildar, vide proceedings No.Dr.No.431/79/A3 dated 15.05.1974, after due enquiry, and since then he was in possession and enjoyment of the same. After his death, the petitioners, being his legal heirs, have been in possession and enjoyment of the said land. While so, the 2nd respondent issued a show cause notice, dated 18.12.1997, to the petitioners calling upon them to show cause as to why the D-Form patta, dated 15.05.1974, issued in favour of the said R.Vishnu Murthy, should not be cancelled, as he is not eligible to get the same. Pursuant to the same, the petitioners submitted a detailed explanation, dated 06.01.1998. After considering their explanation, the 2nd respondent dropped further proceedings. But, to the utter surprise of the petitioners, the 1st respondent has issued another notice, dated 27.07.1998, calling upon the petitioners to explain as to why the said D-Form patta should not be cancelled. According to the petitioners, under BSO 15 (18), the Collector can only initiate proceedings for cancellation of patta within 3 years after its issuance, but not the Joint Collector. Therefore, the notice issued by the 1st respondent, after lapse of 24 years, is arbitrary and without jurisdiction. Hence, this writ petition.

The 1st respondent filed a detailed counter-affidavit stating that R.Vishnu Murthy, who was working as Teacher in Z.P. High School, Kottam village, obtained the D-Form patta claiming that he is a landless poor. Besides his employment, he also possessed other immovable properties. Though the second respondent initiated proceedings, he dropped the same, as he was not competent to do so, and as such the 1st respondent issued the impugned show cause notice. The petitioners, without submitting any explanation, are intending to squat over the land depriving the poor. There are no merits in the writ petition and the same is liable to be dismissed.

The unofficial respondents 3 to 5, who were impleaded as per orders in W.P.M.P.No.9914 of 2003 dated 29.03.2007, filed a counter stating that they have been in possession and enjoyment of the land in question and neither the said R. Vishnu Murthy nor the petitioners are in possession and enjoyment of the land in question and that the said R. Vishnu Murthy obtained D-Form patta by misrepresentation that he is a landless poor, though he possessed other properties and was also working as a teacher. Therefore, after enquiry, the revenue authorities rightly found that the D-Form patta was obtained by fraud and the same is liable to be cancelled.

Heard the learned counsel for the petitioners and the learned Government Pleader for Assignment, and also the learned counsel for the other unofficial respondents.

No doubt, as contended by the learned counsel for the petitioners, the respondents cannot question the D-Form patta granted on 15.05.1974, after a long lapse of about 24 years, and consequently, the impugned show cause notice should not have been issued. But, as it is only a show cause notice, the petitioners can submit their

explanation.

Accordingly, the writ petition is disposed of directing the petitioners to submit their explanation to the notice, dated 27.07.1998, issued by the first respondent. During the pendency of the enquiry, the interim stay granted by this Court, on 04.08.1998, shall continue. There shall be no order as to costs.

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GOPALA KRISHNA TAMADA, J

29th March, 2007
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